IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

MFA.No. 328 of 2002(B)

OPMV.555/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, N. PARAVUR
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APPELLANT: PETITIONERS.
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1. **KOCHUTHRESIA, W/O.LATE C.V.JOSHI,**
   AGED 34 YEARS, CHEMMARACHERY HOUSE,
   CHERUVYPU, AYYANPILLY P.O., ERNAKULAM.

2. **NIMMIE ROSE, D/O.LATE C.V.JOSHI,**
   MINOR AGED 12 YEARS, REPRESENTED BY MOTHER
   KOCHUTHRESI, CHEMMARACHERY HOUSE, CHERYVYPU,
   AYYANPILLY P.O., ERNAKULAM.

3. **NEENU ALIA, D/O. LAT C.V.JOSHI,**
   MINOR AGED 10 YEARS, REPRESENTED BY MOTHER
   KOCHUTHRESI, CHEMMARACHERY HOUSE, CHERYVYPU,
   AYYANPILLY P.O., ERNAKULAM.

BY ADV. SRI.A.K.SRINIVASAN
SRI.MATHEW JOHN

RESPONDENTS: RESPONDENTS.
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1. **E.G.MOHANAN, ESWARATH HOUSE,**
   KUZHOOR, P.O.IRITTY, KANNOOR.

2. **MOHANAN, S/O. RAMANKUTTY,**
   VAZHENGATTIL HOUSE, SREEKANDAPURAM P.O., KANNOOR.

3. **UNITED INDIA INSURANCE CO.LTD.,**
   CALICUT-1.

4. **A.J.JOSEPH, S/O. JOSEPH,**
   ALUMKAL HOUSE, ANIKAD EAST P.O., KOTTAYAM.

5. **V.J.KAMAL, S/O. HAMEEDKUTTY,**
   KACHERIPADI KARIKKUMVALAVU HOUSE, PONKUNNAM,
   CHERAKADAVU, KOTTAYAM.

6. NATIONAL INSURACE COMPANY LTD.,
BAKERY JUNCTION, KOTTAYAM-1.

7. C.C.VARGHESE, AGED 62 YEARS,
S/O. CHEEKU, CHEMMARACHERY HOUSE, CHERUVYPU,
AYYANPILLY P.O., ERNAKULAM.

8. E.P.ROSY, AGED 56 YEARS,
W/O. VARGHESE, CHEMMARACHERY HOUSE, CHERYVYPU,
AYYANPILLY P.O., ERNAKULAM.

BY ADV. SRI.PROMY KAPRAKKATT FOR R1
SRI.K.MANOJ CHANDRAN
SRI.SUNIL NAIR PALAKKAT
SRI.I.DINESH MENON FOR R4
SRI.M.A.GEORGE FOR R6
SRI.A.A.MOHAMMED NAZIR FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 328 of 2002

Dated this the 2nd day of November, 2007

Judgment

Koshy,J.

A 29 year old young man died in a motor accident on 23.4.1996. His young wife aged 27 and two minor children aged seven and five years filed application for compensation claiming an amount of Rs. Five lakhs. The tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle insured by the third respondent insurance company. Only dispute is regarding the quantum of compensation awarded. Total compensation awarded by the tribunal is only Rs.3,37,360/-.

2. It is stated that the claimant was a carpenter by profession. The tribunal accepted that. He was a skilled worker. It is the case of the claimant that the deceased was not only working as a carpenter for others, he was also taking contract work for making furnitures and earning money. He was working in Karnataka as work was available in plenty in Karnataka. Without making any exorbitant claim, it was stated that monthly income was only Rs.2,500/-. The accident occurred on 23.4.1996. Considering the

monthly income of even an unskilled person in Kerala, Rs.100/- can be taken as an average income per day and as a carpenter he may get at least 20 or 25 days' work. Therefore, he will get at least Rs.2,400 to Rs.2,500/- per month. If that be so, Rs.1,600/- can be fixed as the monthly income. The tribunal has fixed 18 as the multiplier. Even though it is contended that considering the increase in life span and also reduction in interest rate, a higher multiplier should be taken. A three-member Bench of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Company Limited and another (JT 2002 (Suppl.1) SC 451), held that second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under section 163-A, but, it serves as a guideline for awarding compensation under section 166. In Abati Bezbaruah v. Deputy Director General, Geological Survey of India and another ((2003) 3 SCC 148), it was held that structured formula mentioned in second schedule gives guidelines for determination of compensation. Deviation from the structured formula can be resorted to only in exceptional cases and in A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689), the Supreme Court very clearly stated that except in extra-ordinary cases second schedule should be followed while assessing compensation under section 166.

There is no exceptional circumstances to deviate from the structured formula. The certificate shows the age as 29. The tribunal accepted 29 as the age and considering the date of birth also, he is aged only 29. It was contended that in view of the reduction in interest rate and increase in life expectancy and considering the age of the claimants, a higher multiplier should be applied. Since the tribunal has taken second schedule for guidance and fixed the multiplier, we are not increasing the multiplier. Taking guidance from the second schedule, we are not increasing the multiplier 18 adopted by the tribunal. Therefore, compensation for loss of dependency will be Rs.1600 x 12 x 18 = Rs.3,45,600/-. The tribunal has awarded only Rs.2,88,360/-. So, additional compensation payable under this head is Rs.57,240/-.

4. It is submitted that the accident occurred in Malappuram district. The body was taken to Thirurangadi hospital and then transported back to the house in ambulance. Rs.3,000/- was claimed on the basis of the actual amount, but, only Rs.2,000/- was granted. So, we award Rs.1,000/- more on that head. Even though it was argued that compensation awarded under other heads are very meagre, considering the total amount awarded, we are not increasing the compensation awarded under other heads.

The additional amount of Rs.57,240/- should be deposited by the third respondent insurance company with 7.5 % interest from the date of application till its deposit. On deposit of the above, Rs.10,000/- should be given to 7th and 8th respondents (parents) and first appellant is entitled to withdraw one-third of the balance amount and balance should be deposited in a nationalised bank enabling the minor children to withdraw the same when they attains majority at the time of their marriage.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 328 of 2002

Judgment

Dated:2nd November, 2007